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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

April 14, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation
CC Docket No. 98-147

Dear Ms. Salas:

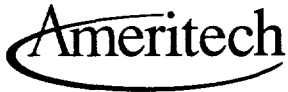
Attached is a copy of a letter sent to Lawrence Strickling, Chief, Common Carrier Bureau. Please include it in the record of the above-reference docket.

Sincerely,

Christopher M. Heimann

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John T. Lenahan
Assistant General Counsel

April 14, 1999

Mr. Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte Presentation**
CC Docket No. 98-147

Dear Mr. Strickling:

The Commission recently adopted measures intended to implement one of the primary objectives of the Telecommunications Act of 1996 (1996 Act), which is to promote innovation and investment by *all* telecommunications providers in advanced telecommunications capability in order to ensure that all Americans have access to advanced telecommunications services.¹ The Commission, however, fulfilled only half of its mandate under section 706 by limiting its action to steps meant to facilitate deployment of advanced telecommunications capability by competitive local exchange carriers (CLECs). Once again, the Commission deferred action on proposals to remove regulatory barriers to deployment of such capabilities by incumbent carriers (ILECs).² As a consequence, ILECs continue to labor under regulatory restrictions that prevent them from deploying advanced telecommunications capabilities on an efficient, widespread basis, and, therefore, handicap significantly their ability to meet consumer demand for advanced services.³

Ameritech is, however, encouraged by the Commission's acknowledgement that additional deregulatory steps are necessary to ensure that incumbents make decisions to deploy advanced services in response to market forces, rather than regulatory

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Notice of Proposed Rulemaking, FCC 99-48 at para. 1 (rel. Mar. 31, 1999) (*First Report and Order*).

² *Id.* at 3.

³ As Ameritech pointed out in its comments, the magnitude of this competitive handicap is demonstrated by the fact that Ameritech has less than five (5) percent of the market for advanced data services in its region. Ameritech Comments at 68.

requirements, and by its commitment to take such steps in a future order.⁴ Accordingly, Ameritech urges the Commission to fulfill expeditiously the second half of its section 706 mandate by eliminating one of the most significant impediments to investment by incumbents in advanced telecommunications capability – that is, the existing LATA framework.⁵ In particular, Ameritech reiterates its request that the Commission adopt Ameritech's and NorthPoint Communications's joint proposal for a streamlined process for approving Bell operating company (BOC) requests for limited LATA boundary changes for the provision of advanced data services if the requesting BOC demonstrates that it has implemented certain procompetitive steps designed to ensure that CLECs have access to the network elements they need to provide competing services, and that the BOC cannot use such relief for anticompetitive ends.⁶ In order to facilitate Commission consideration of this proposal, Ameritech elaborates on the expedited LATA boundary modification procedures the Commission should adopt to afford a BOC meaningful interLATA relief.

As discussed in Ameritech's comments, Commission procedures for approving changes in LATA boundaries for the provision by a BOC subsidiary of advanced data services must be swift and certain. Requiring a BOC to demonstrate the need for interLATA relief on a case-by-case (*i.e.*, LATA-by-LATA or customer-by-customer) basis would inundate the Commission with hundreds of such requests, forcing the Commission, in each case, to determine subjectively whether relief is necessary. During the inevitable regulatory delays that will develop, potential BOC customers will continue to be denied access to advanced services. Subjective case-by-case procedures, therefore,

⁴ *First Report and Order*, FCC 99-48 at paras. 3, 7.

⁵ Ameritech believes that modification of existing LATA boundaries to permit BOC provision of advanced packet-switched data services on a nationwide basis, on the conditions set forth herein, would promote prompt and ubiquitous deployment by the BOCs of advanced telecommunications capability, with little or no risk of anticompetitive harm. As such, it continues to believe that establishment of nationwide LATAs for advanced services is appropriate, but supports state-wide relief as a positive first step that should be implemented without delay.

⁶ Ameritech and NorthPoint proposed that the Commission provide limited interLATA relief to permit a BOC: (1) to provide interLATA transport within a state for data services provided to customers with multiple locations in that state; (2) to access an ATM switch within the state; and (3) to provide transport from the ATM switch to the closest Network Access Point (NAP) outside the LATA in which the switch is located, regardless of whether that NAP is located within the state, if the BOC demonstrates that it has met certain procompetitive conditions. These conditions are that the BOC: (1) provides advanced data services through a separate affiliate that satisfies the separation framework adopted by the Commission; (2) complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements, regarding collocation; and (3) complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements, relating to xDSL and ISDN compatible loops and related OSS. Ameritech Comments, Attachment 2 (Joint Statement of Principles Applicable in a Separate Subsidiary Environment by Ameritech and NorthPoint).

would be administratively unworkable, and undermine the objective of encouraging widespread deployment by BOCs of advanced telecommunications capability.

Only a process that is swift and certain will afford BOCs the type of meaningful and effective LATA relief necessary to encourage them to invest in and deploy advanced telecommunications capability ubiquitously. Accordingly, the Commission should, as Ameritech and NorthPoint proposed, establish an expedited process (60 days) to review LATA boundary modification requests, and apply an objective test to determine whether a BOC could obtain state-wide LATA relief for the specific purposes identified above. Specifically, Ameritech recommends that the Commission adopt the following procedures to implement such a process:

- (1) A BOC seeking to establish a state-wide LATA to provide advanced data services should be required to file petitions for LATA boundary modification on a state-by-state basis. Such a petition for limited LATA relief should:
 - (a) Clearly and specifically indicate on its face that it is a request to establish new LATA boundaries for the provision of advanced data services, and is subject to expedited procedures.
 - (b) Specifically identify the state that is the subject of the request.
 - (c) State clearly that the scope of the LATA will be limited only to the provision within that state of data services (including the transport of data traffic originating in that state to the closest NAP, regardless of whether the NAP is located within the state).
 - (d) Specifically limit the request to advanced data services offered in the new LATA through a separate affiliate.
- (2) The petition must also demonstrate that:
 - (a) The BOC complies with currently applicable state and federal rules, as well as terms of applicable tariffs and interconnection agreements, relating to the availability of xDSL and ISDN compatible loops and related OSS.
 - (b) The BOC complies with currently applicable state and federal rules, as well as terms of applicable tariffs and interconnection agreements, regarding collocation.
 - (c) The separate subsidiary satisfies the separation framework adopted by the Commission.

- (3) The BOC should serve a copy of the petition on the relevant state commission at the same that it files the petition with the Commission.
- (4) Within five (5) days after the petition is filed, the Commission should issue a public notice establishing the specific due dates for filings relating to the petition. Simultaneously, the Commission should transmit a copy of the notice to the relevant state commission.
- (5) The Commission should consult with the relevant state commission to determine whether the BOC is providing collocation and access to xDSL and ISDN compatible loops, and related OSS, as set forth above. The Commission should require the relevant state commission to file any written consultation not later than 20 days after the BOC files its application with the Commission.
- (6) Interested third parties should also be required to file any comments on the petition within 20 days after the BOC files the application. The Commission should make clear that it will not consider arguments that do not relate specifically to the merits of the BOC's petition – that is, whether the BOC has satisfied the specific, objective preconditions (discussed above and in Ameritech's joint proposal with NorthPoint) established by the Commission for approving BOC applications to establish new LATAs for advanced data services.
- (7) Participants in the proceeding, including the petitioner, third parties, and the relevant state commission, should be permitted to file a reply to comments made by other participants. The Commission should require any such replies to be filed no later than ten (10) days after the date comments were due (the specific due date should be set forth in the Commission's public notice). Parties (including the BOC applicant) should be prohibited from raising new arguments or including new data that do not respond directly to arguments made by other participants, and from repeating arguments made in their initial comments.
- (8) The Commission should establish appropriate page limits for petitions, comments and reply comments. Ameritech believes, for example, that the petition and supporting brief could appropriately be limited to 25 pages. Comments and reply comments should be similarly limited.
- (9) As it does in the context of section 271 applications, the Commission should generally refuse to consider dispositive motions, and treat them as comments.
- (10) The Commission should treat BOC petitions as permit-but-disclose proceedings for purposes of the *ex parte* rules. It should, however, caution parties to set forth their positions in formal pleadings and not to rely on subsequent *ex partes*.

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- (11) The Commission should issue a decision approving or denying the BOC's application not later than 60 days after the application is filed.

Ameritech believes that the foregoing procedures would establish precisely the sort of expeditious and objective process necessary to afford the BOCs meaningful LATA relief. Such relief is critical to induce BOCs to make the type of investment required to innovate and deploy advanced telecommunications capability ubiquitously in their local service areas. Such relief also would provide a strong incentive for the BOCs to establish expeditiously procompetitive policies that will facilitate the deployment of advanced telecommunications capability by CLECs. This approach would, therefore, kill two birds with one stone, and should be implemented quickly.

Yours sincerely,

A handwritten signature in cursive script that reads "John T. Lenahan / CLEC".

John T. Lenahan